

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

AMENDED IN ASSEMBLY AUGUST 31, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 15, 2015

SENATE BILL

No. 762

Introduced by Senator Wolk

February 27, 2015

An act to amend Sections 10187.5 and 22161 of, and to add and repeal Article 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. Competitive bidding: best value: pilot program: design-build.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works

contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow the Counties of Alameda, Los Angeles, ~~Placer~~, Riverside, San Bernardino, San Diego, Solano, and Yuba to select a bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. The bill would establish procedures and criteria for the selection of a best value contractor. The bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime. The bill would require the board of supervisors of a participating county, before January 1, 2020, to submit a report to specified legislative committees. The bill would repeal the pilot program provisions on January 1, 2020.

The bill would make legislative findings and declarations as to the necessity of a special statute for the Counties of Alameda, Los Angeles, ~~Placer~~, Riverside, San Bernardino, San Diego, Solano, and Yuba.

Existing law, until January 1, 2025, authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and certain local agencies to use the design-build procurement process for specified public works. Existing law defines “best value” for those purposes to mean a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance.

This bill would modify that definition to have the objective criteria evaluated, instead, relate to those specific criteria.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 10187.5 of the Public Contract Code is
- 2 amended to read:
- 3 10187.5. For purposes of this article, the following definitions
- 4 and the definitions in subdivision (a) of Section 13332.19 of the
- 5 Government Code shall apply:

1 (a) “Best value” means a value determined by evaluation of
2 objective criteria that relate to price, features, functions, life-cycle
3 costs, experience, and past performance. A best value determination
4 may involve the selection of the lowest cost proposal meeting the
5 interests of the department and meeting the objectives of the
6 project, selection of the best proposal for a stipulated sum
7 established by the procuring agency, or a tradeoff between price
8 and other specified factors.

9 (b) “Construction subcontract” means each subcontract awarded
10 by the design-build entity to a subcontractor that will perform work
11 or labor or render service to the design-build entity in or about the
12 construction of the work or improvement, or a subcontractor
13 licensed by the State of California that, under subcontract to the
14 design-build entity, specially fabricates and installs a portion of
15 the work or improvement according to detailed drawings contained
16 in the plans and specifications produced by the design-build team.

17 (c) “Department” means the Department of General Services
18 and the Department of Corrections and Rehabilitation.

19 (d) “Design-build” means a project delivery process in which
20 both the design and construction of a project are procured from a
21 single entity.

22 (e) “Design-build entity” means a corporation, limited liability
23 company, partnership, joint venture, or other legal entity that is
24 able to provide appropriately licensed contracting, architectural,
25 and engineering services as needed pursuant to a design-build
26 contract.

27 (f) “Design-build team” means the design-build entity itself and
28 the individuals and other entities identified by the design-build
29 entity as members of its team. Members shall include the general
30 contractor and, if utilized in the design of the project, all electrical,
31 mechanical, and plumbing contractors.

32 (g) “Director” means, with respect to procurements undertaken
33 by the Department of General Services, the Director of General
34 Services or, with respect to procurements undertaken by the
35 Department of Corrections and Rehabilitation, the secretary of that
36 department.

37 SEC. 2. Article 3.7 (commencing with Section 20155) is added
38 to Chapter 1 of Part 3 of Division 2 of the Public Contract Code,
39 to read:

Article 3.7. Best Value Construction Contracting for Counties
Pilot Program

20155. (a) This article provides for a pilot program for the Counties of Alameda, Los Angeles, ~~Placer~~, Riverside, San Bernardino, San Diego, Solano, and Yuba for construction projects in excess of one million dollars (\$1,000,000).

(b) The board of supervisors of a county shall let any contract for a construction project pursuant to this article to the bidder representing the best value or else reject all bids.

(c) The bidder may be selected on the basis of the best value to the county. In order to implement this method of selection, the board of supervisors shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to Sections 20155.3 to 20155.6, inclusive, and shall be mandatory for a county that chooses to participate in the pilot program.

(d) If the board of supervisors of a county deems it to be in the best interest of the county, the board of supervisors, on the refusal or failure of the successful bidder for a project to execute a tendered contract, may award it to the bidder with the second lowest best value score, as determined in accordance with subdivision (c) of Section 20155.5. If the second bidder fails or refuses to execute the contract, the board of supervisors may likewise award it to the bidder with the third lowest best value score, as determined in accordance with subdivision (c) of Section 20155.5.

20155.1. As used in this article:

(a) “Best value” means a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

(b) “Best value contract” means a competitively bid contract entered into pursuant to this article.

(c) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) “County” means any of the following counties:

(1) The County of Alameda.

(2) The County of Los Angeles.

1 ~~(3) The County of Placer.~~

2 ~~(4)~~

3 (3) The County of Riverside.

4 ~~(5)~~

5 (4) The County of San Bernardino.

6 ~~(6)~~

7 (5) The County of San Diego.

8 ~~(7)~~

9 (6) The County of Solano.

10 ~~(8)~~

11 (7) The County of Yuba.

12 (e) “Demonstrated management competency” means the
13 experience, competency, capability, and capacity of the proposed
14 management staffing to complete projects of similar size, scope,
15 or complexity.

16 (f) “Financial condition” means the financial resources needed
17 to perform the contract. The criteria used to evaluate a bidder’s
18 financial condition shall include, at a minimum, capacity to obtain
19 all required payment bonds, performance bonds, and liability
20 insurance.

21 (g) “Labor compliance” means the ability to comply with, and
22 past performance with, contract and statutory requirements for the
23 payment of wages and qualifications of the workforce. The criteria
24 used to evaluate a bidder’s labor compliance shall include, as a
25 minimum, the bidder’s ability to comply with the apprenticeship
26 requirements of the California Apprenticeship Council and the
27 Department of Industrial Relations, its past conformance with
28 those requirements, and its past conformance with requirements
29 to pay prevailing wages on public works projects.

30 (h) “Qualifications” means the financial condition, relevant
31 experience, demonstrated management competency, labor
32 compliance, and safety record of the bidder, and, if required by
33 the bidding documents, some or all of the preceding qualifications
34 as they pertain to subcontractors proposed to be used by the bidder
35 for designated portions of the work. A county shall evaluate
36 financial condition, relevant experience, demonstrated management
37 competency, labor compliance, and safety record, using, to the
38 extent possible, quantifiable measurements.

1 (i) “Relevant experience” means the experience, competency,
2 capability, and capacity to complete projects of similar size, scope,
3 or complexity.

4 (j) “Safety record” means the prior history concerning the safe
5 performance of construction contracts. The criteria used to evaluate
6 a bidder’s safety record shall include, at a minimum, its experience
7 modification rate for the most recent three-year period, and its
8 average total recordable injury or illness rate and average lost work
9 rate for the most recent three-year period.

10 20155.2. As used in this article:

11 (a) “Apprenticeable occupation” means an occupation for which
12 the Chief of the Division of Apprenticeship Standards had approved
13 an apprenticeship program pursuant to Section 3075 of the Labor
14 Code prior to January 1, 2014.

15 (b) “Skilled and trained workforce” means a workforce that
16 meets all of the following conditions:

17 (1) All the workers are either skilled journeypersons or
18 apprentices registered in an apprenticeship program approved by
19 the Chief of the Division of Apprenticeship Standards.

20 (2) (A) As of January 1, 2016, at least 20 percent of the skilled
21 journeypersons employed to perform work on the contract or
22 project by the entity and each of its subcontractors at every tier
23 are graduates of an apprenticeship program for the applicable
24 occupation that was either approved by the Chief of the Division
25 of Apprenticeship Standards pursuant to Section 3075 of the Labor
26 Code or located outside California and approved for federal
27 purposes pursuant to the apprenticeship regulations adopted by
28 the United States Secretary of Labor.

29 (B) As of January 1, 2017, at least 30 percent of the skilled
30 journeypersons employed to perform work on the contract or
31 project by the entity and each of its subcontractors at every tier
32 are graduates of an apprenticeship program for the applicable
33 occupation that was either approved by the Chief of the Division
34 of Apprenticeship Standards pursuant to Section 3075 of the Labor
35 Code or located outside California and approved for federal
36 purposes pursuant to the apprenticeship regulations adopted by
37 the United States Secretary of Labor.

38 (C) As of January 1, 2018, at least 40 percent of the skilled
39 journeypersons employed to perform work on the contract or
40 project by the entity and each of its subcontractors at every tier

1 are graduates of an apprenticeship program for the applicable
2 occupation that was either approved by the Chief of the Division
3 of Apprenticeship Standards pursuant to Section 3075 of the Labor
4 Code or located outside California and approved for federal
5 purposes pursuant to the apprenticeship regulations adopted by
6 the United States Secretary of Labor.

7 (D) As of January 1, 2019, at least 50 percent of the skilled
8 journeypersons employed to perform work on the contract or
9 project by the entity and each of its subcontractors at every tier
10 are graduates of an apprenticeship program for the applicable
11 occupation that was either approved by the Chief of the Division
12 of Apprenticeship Standards pursuant to Section 3075 of the Labor
13 Code or located outside California and approved for federal
14 purposes pursuant to the apprenticeship regulations adopted by
15 the United States Secretary of Labor.

16 (E) As of January 1, 2020, at least 60 percent of the skilled
17 journeypersons employed to perform work on the contract or
18 project by the entity and each of its subcontractors at every tier
19 are graduates of an apprenticeship program for the applicable
20 occupation that was either approved by the Chief of the Division
21 of Apprenticeship Standards pursuant to Section 3075 of the Labor
22 Code or located outside California and approved for federal
23 purposes pursuant to the apprenticeship regulations adopted by
24 the United States Secretary of Labor.

25 (F) For an apprenticeable occupation in which no apprenticeship
26 program had been approved by the Chief of the Division of
27 Apprenticeship Standards prior to January 1, 1995, up to one-half
28 of the graduation percentage requirements of subparagraphs (A)
29 to (E), inclusive, may be satisfied by skilled journeypersons who
30 commenced working in the apprenticeable occupation prior to the
31 chief's approval of an apprenticeship program for that occupation
32 in the county in which the project is located.

33 (c) "Skilled journeyperson" means a worker who either:

34 (1) Graduated from an apprenticeship program for the applicable
35 occupation that was approved by the Chief of the Division of
36 Apprenticeship Standards or located outside California and
37 approved for federal purposes pursuant to the apprenticeship
38 regulations adopted by the United States Secretary of Labor.

39 (2) Has at least as many hours of on-the-job experience in the
40 applicable occupation as would be required to graduate from an

1 apprenticeship program for the applicable occupation that is
2 approved by the Chief of the Division of Apprenticeship Standards.

3 20155.3. A county shall proceed in accordance with the
4 following when awarding best value contracts under this article:

5 (a) The county shall not select a bidder on the basis of the best
6 value to a county unless, after evaluating at a public meeting the
7 alternative of awarding the contract on the basis of the lowest bid
8 price, the county makes a written finding that awarding the contract
9 on the basis of best value, for the specific project under
10 consideration, will accomplish one or more of the following
11 objectives: reducing project costs, expediting the completion of
12 the project, or providing features not achievable through awarding
13 the contract on the basis of the lowest bid price.

14 (b) The county shall prepare a solicitation for bids and give
15 notice pursuant to Section 20125. A county may identify specific
16 types of subcontractors that are required to be included in the bids.
17 A county shall comply with Chapter 4 (commencing with Section
18 4100) of Part 1 with regard to construction subcontractors identified
19 in the bid.

20 (c) The county shall establish a procedure to prequalify bidders
21 pursuant to Section 20101. The information required pursuant to
22 this section shall be verified under oath by the bidder in the manner
23 in which civil pleadings in civil actions are verified. Information
24 submitted by the bidder as part of the evaluation process shall not
25 be open to public inspection to the extent that information is
26 exempt from disclosure under the California Public Records Act
27 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
28 Title 1 of the Government Code).

29 (d) Each solicitation for bids shall do all of the following:

30 (1) Invite prequalified bidders to submit sealed bids in the
31 manner prescribed by this article.

32 (2) Include a section identifying and describing the following:

33 (A) Criteria that the county will consider in evaluating bids.

34 (B) The methodology and rating or weighting system that will
35 be used by the county in evaluating bids.

36 (C) The relative importance or weight assigned to the criteria
37 identified in the request for bids.

38 (e) Final evaluation of the best value contractor shall be done
39 in a manner that prevents cost or price information from being
40 revealed to the committee evaluating the qualifications of the

1 bidders prior to completion and announcement of that committee's
2 decision.

3 20155.4. (a) A best value contractor shall not be prequalified
4 or shortlisted unless the contractor provides an enforceable
5 commitment to the county that the contractor and its subcontractors
6 at every tier will use a skilled and trained workforce to perform
7 all work on the project or contract that falls within an
8 apprenticeable occupation in the building and construction trades.

9 (b) A contractor's commitment that a skilled and trained
10 workforce will be used to perform the project or contract may be
11 established by any of the following:

12 (1) The contractor's agreement with the county that the
13 contractor and its subcontractors at every tier will comply with the
14 requirements of this section and that the contractor will provide
15 the county with evidence, on a monthly basis while the project or
16 contract is being performed, that the contractor and its
17 subcontractors are complying with the requirements of this section.

18 (2) If the county has entered into a project labor agreement that
19 will bind all contractors and subcontractors performing work on
20 the project or contract, and that includes the requirements of this
21 section, the contractor's agreement that it will become a party to
22 that project labor agreement.

23 (3) Evidence that the contractor has entered into a project labor
24 agreement that includes the requirements of this section and that
25 will bind the contractor and all its subcontractors at every tier
26 performing the project or contract.

27 20155.5. Selection of the best value contractor shall be made
28 as follows:

29 (a) (1) An evaluation committee appointed by the county shall
30 evaluate the qualifications of the bidders based solely upon the
31 criteria set forth in the solicitation documents, and shall assign a
32 qualifications score to each bid.

33 (2) A county shall establish written policies and procedures,
34 consistent with applicable law, to ensure that members of an
35 evaluation committee are free from conflicts of interest, if the
36 county has not already established applicable written policies and
37 procedures.

38 (b) A county shall not award a contract for a construction project
39 pursuant to this article if a solicitation for bids for that construction

1 project results in the submission of fewer than three responsive
2 bids to the county for evaluation.

3 (c) Except as provided in subdivision (d) of Section 20155, the
4 award of the contract shall be made to the bidder whose bid is
5 determined by a county, in writing, to be the best value to the
6 county. To determine the best value contractor, the county shall
7 divide each bidder's price by its qualifications score. The lowest
8 resulting cost per quality point will represent the best value bid.

9 (d) A county shall issue a written decision of its contract award.

10 (e) Upon issuance of a contract award, a county shall publicly
11 announce its award identifying the best value contractor to which
12 the award is made, the project, the project price, and the selected
13 best value contractor's score based on the evaluation criteria listed
14 in the request for bids. The notice of award shall be made public
15 and include the score of the selected best value contractor in
16 relation to all other responsive bidders and their respective prices.
17 The contract file shall include documentation sufficient to support
18 the decision to award.

19 20155.6. (a) If a county elects to award a project pursuant to
20 this article, retention proceeds withheld by the county from the
21 selected best value contractor shall not exceed 5 percent if a
22 performance and payment bond, issued by an admitted surety
23 insurer, is required in the solicitation of bids.

24 (b) In a contract between the selected best value contractor and
25 a subcontractor, and in a contract between a subcontractor and any
26 subcontractor thereunder, the percentage of the retention proceeds
27 withheld shall not exceed the percentage specified in the contract
28 between the county and the selected best value contractor. If the
29 selected best value contractor provides written notice to a
30 subcontractor that, prior to or at the time the bid is requested, a
31 bond may be required and the subcontractor subsequently is unable
32 or refuses to furnish a bond to the selected best value contractor,
33 then the selected best value contractor may withhold retention
34 proceeds in excess of the percentage specified in the contract
35 between the county and the selected best value contractor from
36 any payment made by the selected best value contractor to the
37 subcontractor.

38 20155.7. (a) Before January 1, 2020, the board of supervisors
39 of a participating county shall submit a report to the appropriate
40 policy committees of the Legislature and the Joint Legislative

1 Budget Committee. The report shall include, but is not limited to,
2 the following information:

3 (1) A description of the projects awarded using the best value
4 procedures.

5 (2) The contract award amounts.

6 (3) The best value contractors awarded the projects.

7 (4) A description of any written protests concerning any aspect
8 of the solicitation, bid, or award of the best value contracts,
9 including the resolution of the protests.

10 (5) A description of the prequalification process.

11 (6) The criteria used to evaluate the bids, including the weighting
12 of the criteria and an assessment of the effectiveness of the
13 methodology.

14 (7) If a project awarded under this article has been completed,
15 an assessment of the project performance, to include a summary
16 of any delays or cost increases.

17 (b) A report submitted pursuant to subdivision (a) shall be
18 submitted in compliance with Section 9795 of the Government
19 Code.

20 20155.8. Except as otherwise provided in this article, this article
21 is not intended to change in any manner any guideline, criteria,
22 procedure, or requirement of a county to let any contract for a
23 project to the lowest responsible bidder or else reject all bids.

24 20155.9. This article shall remain in effect only until January
25 1, 2020, and as of that date is repealed.

26 SEC. 3. Section 22161 of the Public Contract Code is amended
27 to read:

28 22161. For purposes of this chapter, the following definitions
29 apply:

30 (a) “Best value” means a value determined by evaluation of
31 objective criteria that relate to price, features, functions, life-cycle
32 costs, experience, and past performance. A best value determination
33 may involve the selection of the lowest cost proposal meeting the
34 interests of the local agency and meeting the objectives of the
35 project, selection of the best proposal for a stipulated sum
36 established by the procuring agency, or a tradeoff between price
37 and other specified factors.

38 (b) “Construction subcontract” means each subcontract awarded
39 by the design-build entity to a subcontractor that will perform work
40 or labor or render service to the design-build entity in or about the

1 construction of the work or improvement, or a subcontractor
2 licensed by the State of California that, under subcontract to the
3 design-build entity, specially fabricates and installs a portion of
4 the work or improvement according to detailed drawings contained
5 in the plans and specifications produced by the design-build team.

6 (c) “Design-build” means a project delivery process in which
7 both the design and construction of a project are procured from a
8 single entity.

9 (d) “Design-build entity” means a corporation, limited liability
10 company, partnership, joint venture, or other legal entity that is
11 able to provide appropriately licensed contracting, architectural,
12 and engineering services as needed pursuant to a design-build
13 contract.

14 (e) “Design-build team” means the design-build entity itself
15 and the individuals and other entities identified by the design-build
16 entity as members of its team. Members shall include the general
17 contractor and, if utilized in the design of the project, all electrical,
18 mechanical, and plumbing contractors.

19 (f) “Local agency” means the following:

20 (1) A city, county, or city and county.

21 (2) A special district that operates wastewater facilities, solid
22 waste management facilities, water recycling facilities, or fire
23 protection facilities.

24 (3) Any transit district, included transit district, municipal
25 operator, included municipal operator, any consolidated agency,
26 as described in Section 132353.1 of the Public Utilities Code, any
27 joint powers authority formed to provide transit service, any county
28 transportation commission created pursuant to Section 130050 of
29 the Public Utilities Code, or any other local or regional agency,
30 responsible for the construction of transit projects.

31 (g) (1) For a local agency defined in paragraph (1) of
32 subdivision (f), “project” means the construction of a building or
33 buildings and improvements directly related to the construction
34 of a building or buildings, county sanitation wastewater treatment
35 facilities, and park and recreational facilities, but does not include
36 the construction of other infrastructure, including, but not limited
37 to, streets and highways, public rail transit, or water resources
38 facilities and infrastructure. For a local agency defined in paragraph
39 (1) of subdivision (f) that operates wastewater facilities, solid waste
40 management facilities, or water recycling facilities, “project” also

1 means the construction of regional and local wastewater treatment
2 facilities, regional and local solid waste facilities, or regional and
3 local water recycling facilities.

4 (2) For a local agency defined in paragraph (2) of subdivision
5 (f), “project” means the construction of regional and local
6 wastewater treatment facilities, regional and local solid waste
7 facilities, regional and local water recycling facilities, or fire
8 protection facilities.

9 (3) For a local agency defined in paragraph (3) of subdivision
10 (f), “project” means a transit capital project that begins a project
11 solicitation on or after January 1, 2015. A “project,” as defined by
12 this paragraph, that begins the solicitation process before January
13 1, 2015, is subject to Article 6.8 (commencing with Section
14 20209.5) of Chapter 1. “Project,” as defined by this paragraph,
15 does not include state highway construction or local street and
16 road projects.

17 SEC. 4. The Legislature finds and declares that a special law
18 is necessary and that a general law cannot be made applicable
19 within the meaning of Section 16 of Article IV of the California
20 Constitution because of the need to establish a pilot project for the
21 Counties of Alameda, Los Angeles, ~~Placer~~, Riverside, San
22 Bernardino, San Diego, Solano, and Yuba to determine the
23 potential benefits and consequences of using best value
24 procurement to facilitate infrastructure improvements and ease
25 fiscal impacts.

26 SEC. 5. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.